SUGGESTIONS

WITH REFERENCE TO THE

PROPOSED NEW ACT,

RESPECTING

Letters Patent for Inventions,

IN THE

DOMINION OF CANADA.

BY

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MONTREAL,—NOVEMBER, 1867.

Montreal:
PRINTED BY JOHN LOVELL, ST. NICHOLAS STREET.
1867.

ENGINEER AND PATENT OFFICES,

48 GREAT ST. JAMES STREET,

MONTREAL, 14th November, 1867.

SIR,

In conducting an extensive business, procuring Letters Patent for Inventions, we have had opportunities in our intercourse with the great body of Manufacturers, Inventors, and Mechanics in the Dominion, and elsewhere, of learning their views with reference to the illiberality of the Patent Laws here, and the various alterations and amendments which, in their opinion, should be introduced in the new Law now under consideration.

From many quarters, we have been requested to place the details of the proposed improvements in a proper form, with the view of bringing the same under your notice, for consideration.

That the several alterations and amendments to be presently mentioned should be made is, as far as we can ascertain, the general wish of the country, and will be hailed by Manufacturers and Inventors not only in the Dominion, but through Great Britain, the United States, France and other countries, with much gratification, as an important step towards placing the Dominion in the position she should occupy with relation to Letters Patent for Inventions, and the important consequences flowing therefrom.

At the present time, all the nations of the world, with the exception of Canada, Nova Scotia, Prince Edward Island, Switzerland, Greece, Turkey, China and Japan, grant Letters Patent for Inventions to all Foreigners, on the same terms as to their own subjects.—No matter how illiberal the governments may be in other respects, or how high the protective walls may be erected for the supposed benefit of their subjects, they are, with the exception of the above named countries (with some of which we should scarcely deem it an honour to be classed) singularly unanimous in the free and equal rights accorded to all people, in matters of Invention.

In this respect "free trade" has prevailed with the most gratifying results, as is proved by the enormous strides in manufacturing industry which have taken place in Great Britain, France, United States, Holland, Belgium, &c., &c., attributable in a great measure to the inventive genius of the people, fostered and supported by wise and liberal Patent Laws, which secure a proper remuneration to the inventor, irrespective of nationality. Among the British Provinces in America, we find that New Brunswick and Newfoundland have wisely shaken off the shackles of prejudice and exclusiveness, and allow all foreigners to obtain Patents on the same terms as are granted to their own citizens. This applies also to all Great Britain's colonies in the eastern and southern hemispheres. By this arrangement, the inhabitants of these colonies or provinces are permitted to obtain Patents in the United States for the reduced fee of $35, in place of the discriminating fee of $500 charged to the inhabitants of Canada, Nova Scotia, and Prince Edward Island, in return for their exclusiveness in not permitting American citizens to obtain Letters Patent on any terms, even by the payment of an equally large fee.

The United States Patent Law is so framed, that as soon as we cease to discriminate against their citizens in the granting of Patents in the Dominion of Canada, their fee at once drops from $500 to $35, without additional legislation.

The proposed change in our laws, by which this good result would be obtained, will at once open a market of 35.000.000 of enterprising, wealthy and speculative people to our Canadian inventors, as all wishing to apply could afford to pay the lesser fee of $35, while but few can pay, in the first instance, the larger fee of $500. In return for 35.000.000, given to our inventors, we give theirs but about one-tenth the number, and as our inventors, as a class, will equal if not excel those of the United States, in point of ability, we have a large margin in our favour, by the proposed alteration. From this it is evident that if in the new law, we adhere to the exploded exclusive principle, it will result, to use a common but forcible expression, in "cutting our own throats" without doing much harm to our neighbours.

A United States Patent granted to one of our clients, recently

sold for eighty thousand dollars in gold, for the six New England States, and for thirty thousand dollars in greenbacks for each of several other States.—We are acquainted with several other Canadian Patentees who have sold their inventions for large sums in the United States, and with many more as valuable inventions which would sell equally well, could the inventors afford to paythe high fee in that country.

It is to be hoped the spirit displayed by New Brunswick and Newfoundland, will be acted on in framing the New Dominion Patent Law, and that British,—American,—and other citizens may be allowed to obtain Patents on the same terms as granted to our own people, in return for their liberality—in fact that our legislation on this important subject be progressive and not retrograde; that the policy of the Dominion from this time separate or part company with that followed by Turkey, Greece, China, and Japan, and thus enable our country to take its place in the ranks of enlightened progressive nations.

A special clause with reference to Patents issued to alien inventors, similar to the one in the United States Patent Law, might be inserted, to the effect that the Patent be kept on sale at a reasonable rate for eighteen months from date, or otherwise the Patent to become void.

A large revenue would flow into the Patent Office, from foreign inventors, and if periods for which the Patents are granted be made short, but renewable on payment of additional fees, they being in operation or on sale, as in some other countries, a large percentage of the patents granted would lapse from non-payment of fees at the expiration of the first or second periods, and the invention thus become public property.

There are many arguments which could be brought forward in support of a liberal Patent Law, while, on the other hand, no valid reasons can be given for the abrogation of all Patent Laws, by the few theoretical and mystical gentlemen who advocate this course.—We reply to their arguments, such as they are, by significantly pointing to Turkey, Greece, Switzerland, &c., &c., as samples of the results produced by the action of their strange and ridiculous theory, and to which condition England, United States,

and other liberal Patent countries would soon approximate, were the great stimulus of wealth and honour removed from their inventors, by wiping out their liberal Patent Laws, which guarantee and secure to them these two great prime movers of intellectual and physical activities.

With the foregoing remarks applicable to the proposed alteration of the existing Patent Laws of Canada, in so far as they relate to the class of persons to whom Patents may be granted, we will now proceed to indicate the changes which may be advantageously made in the remaining sections of the Law, as given in the Consolidated Statutes of Canada, p.p. 419–432, following the sections in regular order.

Sections 1 & 2.—To remain as at present.

Sections 3 & 4.—To be altered to admit British subjects and foreigners to obtain Patents, whether residents in the Dominion or not. The total duration of Patents should be fourteen years, and not renewable for any additional term. If the invention is a good one, money enough can be made by the proprietor of the Patent in that time, and it should then become the property of the public.

It may be questionable, whether (in the event of the fees being raised) it would not be desirable to divide the total duration of the Patent, into, say, three stages, as in Great Britain.—1st, being three years—2nd of four years—and the last one seven years—a distinct fee being payable at the commencement of each period. This arrangement has been found to work very well in the mother country, and also in other countries. If the invention prove a valuable one, the Patent can be extended from term to term—on the other hand, if it be of little worth, the Patent may lapse at the expiration of the first or second term, and then be open to the public, the Patentee saving the balance of the total fee.

In France and many other European countries, an annual tax is paid for periods ranging from one to twenty-two years—the Patent becoming void if the annual fees are not paid at the proper time. This course causes much trouble, both to the Patentees and to the respective Patent offices, and it is thought the longer periods before mentioned are preferable in every respect.

SECTION 5.—Might be altered to suit aliens who may have obtained Patents in foreign countries, before making application in the Dominion of Canada—Parties using the said invention in the Dominion, prior to the application for a Patent by the foreign inventor, to be suitably protected.

SECTIONS 6, 7, 8 & 9.—To remain as at present.

SECTIONS 10 & 11.—If Patents are granted to foreign inventors for *bona fide* inventions, these two sections should be abrogated.

SECTIONS 12 & 13.—To remain as at present.

SECTION 14.—To be altered to suit heirs, &c., of deceased foreign inventors.

SECTION 15.—To remain as at present.

SECTION 16.—Should be abrogated, if 14 years be made the full term of Patent.

SECTIONS 17 TO 29.—To remain as at present.

SECTION 30.—If the three term system be adopted, we would recommend the payment of *twenty-five dollars* as the goverment tax for the first term of three years—for a second term of four years, an additional payment of *fifty dollars*, and for the last or final term of seven years, the further payment of *one hundred dollars*—or a total fee to the Government for the fourteen years, of *one hundred and seventy-five dollars*, in place of *twenty dollars* for a like term as at present.

All, or nearly all inventors can afford the first payment of $25, and three years will test the value of the invention—if it prove a good one, the next fee can easily be raised, and so on.—If it prove of no great value, the Patent may be allowed to become void, by non-payment of next fee, and consequently be open to the public. The first fee should be moderate in amount, to give the inventor, if a poor person, a chance of obtaining the Patent, without calling in outside assistance, which when done, other persons frequently reap the harvest, by obtaining the control of the Patent, to the detriment of the Patentee.

SECTION 31 to 34.—With reference to the substance of these sections, we would strongly advise that a nearly similar course be followed in regard to the unexpired periods of all Patents granted in each of the Confederated Provinces, both before and since the

1st July last—we recommend a course something like the following:

Let all original Patents, already granted in each of the Provinces, be surrendered by the holder, to the general government, with the payment of a fee—say $25.—Let this payment be endorsed on the parchment, to give it effect from that date, over the entire Dominion, and then returned to the proprietor or party holding the Patent; a saving clause should be added, protecting parties who may be using the invention in any Province not covered by the original Patent, and continuing the right to the use of the specific machine, &c., &c., for the residue of the period the Patent has to run in that Province. This power of extension to have no effect on any Patent not surrendered and the additional fee paid.

A course like the foregoing will be fair and just, not only to the Patentees in all the Provinces, and to the public at large, but will at the same time contribute largely to the revenue of the Patent Office—or what would probably be still better, in the event of the government waiving the additional fee, a simple clause in the Patent law, extending the Patents in the manner indicated, without surrender or payment of fees.

Either of the above courses, if adopted, will open a way to equalize and make uniform the working of all Patents previously granted in each Province, and bring them under one general and central authority. The second course would be considered a graceful compliment from the General Government to the patentees of the Maritime Provinces, as well as to those of our own, and at the same time avoid much trouble in the Patent Office.

If either of these courses be adopted, even should the new law prohibit foreigners obtaining Patents in the Dominion of Canada, the Patents already granted to aliens (especially American citizens) in New Brunswick and Newfoundland, should be treated in like manner as those granted to the subjects of these Provinces. —The faith of the Crown is pledged to the alien Patentees, in granting them the same rights and privileges as their own subjects, it having been with this distinct understanding, that the United States Government reciprocated in granting Patents to subjects of these two Provinces, on the same terms as to their own citizens, at the reduced fee of thirty-five dollars.

The Patents granted to American citizens in New Brunswick and Newfoundland, are limited in number, and their extension over the Dominion, simultaneously with the other Patents, would be but right and proper, if the two countries are to keep faith with each other.

It is submitted whether it would not be advisable to allow inventors the privilege of fyling *caveats* for six months, to give them time for perfecting their inventions.

We have thus ventured to comply with the requests of many Manufacturers, Mechanics and Inventors residing in the different provinces, in giving their ideas as to the proposed alterations in the existing Canadian Patent Laws—These proposed improvements we fully approve of, and though given with some diffidence, yet at the same time, under a firm conviction that the alterations suggested are loudly called for by the great body of the people, and if granted or adopted, will conduce materially to the prosperity of the Dominion, and, at the same time, add largely to the revenue of the Government.

We are, Sir,

Your Obdt. Servants,

CHARLES LEGGE & CO.,

Solicitors of Canadian and Foreign Patents.